Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on December 1, 2018, the Landlord requested monetary compensation from the Tenant for unpaid rent and damage to the rental unit, authority to retain the Tenant's security deposit towards any amounts claimed and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 28, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. What should happen with the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

In support of her claim for monetary compensation from the Tenant the Landlord testified as follows. She stated that the Tenant rented a fully furnished 2 bedroom condo owned by the Landlord beginning on February 15, 2015. Monthly rent was initially $1,550.00 and was lowered to $1,540.00 as of October 2018.

The Tenant paid a ~~$750.00~~ $500.00 security deposit and a $800.00 pet damage deposit for a total of ~~$1,550.00~~ $1,350.00 which the Landlord continues to hold.

The Tenant gave notice to end her tenancy on September 1, 2018.

The Landlord stated that as soon as she received notice from the Tenant she posted the rental unit on Craigslist for $1,500.00 per month and hired a property management company. She claimed that despite her efforts she was not able to re-rent the unit until February 1, 2019 stating that it was simply a slow time of year.

In the hearing before me the Landlord sought monetary compensation for the following

Replacement of sofa	$1.052.72
Replacement of love seat	$1,034.86
Replacement of shag rug	$268.78
October rent	$1,540.00
Carpet cleaning	$115.50
Cleaning	$63.00

The Landlord stated that the sofa and love seat were four years old at the time the tenancy ended. The Landlord confirmed that the amounts claimed above represent the replacement cost and in support of her claim she provided in evidence copies of print outs from the store from which she purchased the furniture. She testified that she did not in fact replace the furniture, as it was her intention to sell it; she further claimed she

was not able to sell the furniture at the end of the tenancy even though she listed both the sofa and loveseat for $800.00.
The Landlord also sought compensation for carpet cleaning and general cleaning. The Landlord confirmed that she did the cleaning herself, however, she provided a quote from a cleaner who her property management company hires to support the amount claimed.

Photos submitted by the Landlord showed the condition of the rental unit including the damage to the furniture caused by the Tenant's cat.

The Landlord confirmed that she did not perform a move in or move out condition inspection.

The Landlord stated that when they discovered that the Tenant brought in a cat her mother did an inspection and at that time they added a clause to the tenancy agreement that the Tenant would replace any items which were damaged by the cat. The Landlord's mother wrote a letter which was provided in evidence confirming that this inspection was performed in September 2017.

The Tenant responded to the Landlord's claims as follows.

The Tenant confirmed that she opposed the Landlord's request for monetary compensation for unpaid rent for October 2018, as she stated that the fixed term tenancy ended on September 30, 2018. The Tenant further stated that the terms of the contract were unclear and despite that she gave the Landlord notice to end the tenancy in good faith. The Tenant stated that she personally delivered her notice to the Landlord before the long weekend.

The Tenant stated that they did not do a move in condition inspection. She confirmed that in late September 2017 she got a cat and renewed her tenancy agreement to include a pet; however she testified that the Landlord's mother did not do an inspection at that time. The Tenant stated that if the Landlord was not willing to let her have a cat, she would move out.

The Tenant stated that she agreed to an increase in rent at the time which was more than the permitted amount. This is confirmed in the new tenancy agreement signed at the time and which included the following addendum:

Pet Addendum:

The tenant is allowed one small cat. All damages made to the condo or contents of the condo will be payable in full by the tenant at the end of tenancy.

I agree to pay damages caused to the rental unit that is beyond normal wear and tear.
A formal Conditions Inspection Report has not been completed prior to move-in.
SK

In terms of the Landlord's claim for monetary compensation for damage to the furniture the Tenant stated that after four years of depreciation she did not think it appropriate that the Landlord was asking for the full replacement cost. The tenant also noted that the Landlord never said a word about damage when she moved out. The Landlord simply asked for the cost to have the carpet cleaned and the blinds cleaned to which the Tenant agreed. The Tenant stated that not once did the Landlord mention that there was any damage to the furniture.

The Tenant stated that before she moved in it was rented as an AirBnB. She noted that some of the photos are under the bed, and some are of furniture the Tenant has never seen.

The Tenant stated that there was no formal move in condition inspection, even though the Tenant asked for it. The Tenant confirmed that at the end of the tenancy, they agreed that the only cleaning which was required was the carpet and the blinds.

In reply the Landlord stated that as they were going through the unit at the end of the tenancy, the Landlord voiced her concerns about damage and the Tenant stormed out of the unit.

The Landlord also noted that the Tenant did not give formal notice to end her tenancy and after the legislative changes of December 11, 2017, move out clauses were no longer enforceable and therefore the Tenant had to give one month's notice.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, *Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: **www.gov.bc.ca/landlordtenant**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on

the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

> **37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
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> (2) When a tenant vacates a rental unit, the tenant must
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> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
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> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

As noted during the hearing, section 44(1)(b) of the *Act* was amended to limit the enforceability of "vacate clauses" in fixed term tenancies. In particular, as of December 11, 2017, unless the parties agree to another fixed term, the tenancy will automatically continue as a month-to-month tenancy under the same terms as the original agreement.

Introduced in evidence was a copy of the Tenant's letter confirming that she gave notice to end her tenancy by letter dated September 1, 2018.

A Tenant may end their tenancy provided they do so pursuant to section 45 of the *Act;* for clarity I reproduce that section as follows:

> **Tenant's notice**
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> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
>
> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
>
> (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
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> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
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> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy*

Guidance can also be found in the *Residential Tenancy Policy Guidelines* and in particular in *Policy Guideline 30—Fixed Term Tenancies* which provides in part as follows:

> A tenant who wants to end the tenancy at the end of the fixed term, must give one month's written notice. For example, if the fixed term expires on June 30th, the tenant must ensure the landlord receives the tenant's notice to end the tenancy by May 31st.

The tenancy agreement provided in evidence confirms that monthly rent was payable on the 1st of the month. As such, and pursuant to section 45(2)(c), and the above referenced *Guideline,* to be effective September 30, 2018, the Tenant was required to give one month's notice no later than on August 31, 2018. Consequently, the Tenant's notice is effective October 31, 2018.

The Landlord testified that she advertised the rental unit on a popular buy and sell website. She also testified that she hired a property manager to assist her in re-renting the unit. I accept her evidence that she was not able to re-rent the rental unit for October 1, 2018 such that she is entitled to recovery of these amounts from the Tenant. I also accept her evidence that she mitigated her losses by advertising the rental unit as soon as possible, and for a reduced amount. As noted by the Landlord, the rent was reduced as of October 1, 2018 due to the reduction in some services; I therefore find the Landlord is entitled to recovery of the reduced amount.

I will now turn to the Landlord's claim for damages and cleaning of the rental unit.

The evidence confirms that the Landlord did not complete a move in condition inspection report as required by the *Act* and the *Regulations.*

Pursuant to section 23 and 35 of the *Act,* a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and Tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

> **21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the

> rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

I accept the Tenant's evidence that the Landlord failed to perform a move in condition inspection. The Landlord also failed to submit any photos of the rental unit or any other documentary evidence to support a finding as to the condition of the rental unit at the start of tenancy.

I also find that the Landlord also failed to complete a move out condition inspection *report* as required by the *Act* and the *Regulations.*

The Tenant testified that at no time during the move out inspection did the Landlord make any mention of damage to the furniture. The Tenant also provided a letter from her friend, V.E., and her friend S.L., who both write that they were present during the move out inspection, and confirm the Tenant's testimony that the Landlord did not raise the issue of damage to furniture during the inspection. These letters further confirm the Tenant's testimony that she agreed the Landlord could take the cost of carpet cleaning and light cleaning from her security deposit.

The Tenant further testified that some of the photos provided by the Landlord depict furniture which was not in the rental unit during the tenancy. The importance of move in condition inspection reports is even more so when a rental unit is furnished, particularly if the Landlord seeks compensation for damaged furniture as it is imperative the parties detail the included items on such a report, or a related addendum to the report.

The Landlord submitted photos of the underside of the box spring, and claimed that the Tenant's pet damaged the cloth dust barrier. Similar photos were provided of the underside and backside of the living room couch and love seat. I accept the Tenant's testimony, as well as the evidence from V.E. and S.L. that the Landlord did not bring this damage to the Tenant's attention on move out; presumably, this damage was not visible at the time, and possibly this damage pre-existed the tenancy.

On balance, I find insufficient evidence to support a finding that it was the Tenant's pet that caused this damage to the Landlord's furniture and I therefore dismiss her claim for related compensation.

I similarly dismiss the Landlord's claim for replacement of the shag rug as I find insufficient evidence that the rug required replacement at the end of the tenancy.

I also note that the Landlord claimed the *replacement* cost of the furniture, yet confirmed she did not in fact replace the furniture. She testified that she intended to sell the furniture and was not able to do so even when she priced both the love seat and couch at $800.00 for the pair. The Tenant aptly noted that the furniture would have depreciated in value, in any case, such that it would be inappropriate to provide the Landlord with the replacement cost, even in the event I had found she was entitled to some compensation for the furniture.

The evidence confirms that the Tenant agreed to the Landlord retaining a portion of her deposits towards the carpet cleaning and light cleaning. I therefore award the Landlord the amounts claimed.

Having been only partially successful in her claim I dismiss the Landlord's request to recover the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **$1,718.50** calculated as follows:

October rent	$1,540.00
Carpet cleaning	$115.50
Cleaning	$63.00
TOTAL	**$1,718.50**

Pursuant to section 72 of the *Act,* I authorize the Landlord to retain the Tenant's security deposit of ~~$750.00~~ $500.00 and her $800.00 pet damage deposit and I grant her a Monetary Order for the ~~**$168.50**~~ **$418.50** balance due. The Landlord must serve this Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 20, 2019
Corrected: March 11, 2019

Residential Tenancy Branch